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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,466	03/14/2005	Stephen Foster	DEHNF-001US	8885
7663	7590	08/22/2006	EXAMINER	
STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656			MITCHELL, TEENA KAY	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/505,466	FOSTER ET AL.
	Examiner Teena Mitchell	Art Unit 3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 May 2006.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,18-30 and 32-38 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,19-21,23,26,29,30,32,34-36 and 38 is/are rejected.  
 7) Claim(s) 18,22,24,25,27,28,33 and 37 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed 5/15/06 have been fully considered but they are not persuasive. Applicant firstly argues that support is provided for the claimed limitation of "the cross-sectional area of the gas inlet channel being approximately one-fourth the cross-sectional area of the at least one of the breathing and exhaust channels." Supported by the figures, however, the examiner fails to note any scale noted on any of the figures, which would now show that the originally filed drawings were at the scale now being claimed in the arguments. Therefore the 112 first paragraph rejection with respect to the limitations of claim 34 and the one-fourth the cross-sectional area is being maintained.

Applicant's arguments with respect to claims 1, 18-30, 32-35 has been considered but is moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

**The following is a quotation of the first paragraph of 35 U.S.C. 112:**

**The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.**

**Claim 34 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added claims have

limitations, which lack support from the originally filed specification, the limitations are: “...the inlet channel is approximately one-fourth the cross-sectional area of at least one of the breathing and exhaust channels...” such added limitations constitute new matter.

***Claim Rejections - 35 USC § 102***

**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**Claims 1, 19- 21, 23, 26, 29, 30, 32, 35, 36, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Kniewasser (WO 99/24101).**

Kniewasser in a breathing device discloses in fluid communication, a breathing channel (at 35) and an exhaust channel (at B) extending from a junction there between; and a gas inlet channel (at A) so as in use to introduce gas into said breathing channel such that in use a positive pressure may be maintained in the breathing channel, wherein an axis of the gas inlet channel is laterally offset from an axis of the breathing channel at the point at which the gas inlet channel introduces the gas into the breathing channel (note Fig. 1).

With respect to claim 19, Kniewasser discloses wherein the breathing channel is of a substantially constant cross-sectional area (Fig. 1).

With respect to claim 20, Kniewasser discloses wherein the breathing channel has a substantially circular cross-section (Fig. 1).

With respect to claim 21, Kniewasser discloses wherein the gas inlet channel (A) opens into the breathing channel (Fig. 1).

With respect to claim 23, Kniewasser discloses wherein the gas inlet channel (A) is laterally offset from the breathing channel in a direction toward the exhaust channel (B).

With respect to claim 26, Kniewasser discloses a movable gas inlet channel (via 40).

With respect to claim 29, Kniewasser discloses wherein the breathing device is adapted to be attached directly to a face of a patient (via 30).

With respect to claim 30, Kniewasser discloses wherein the breathing device is adapted to be connected to a mask (30).

With respect to claim 32, Kniewasser discloses wherein the gas inlet channel is arranged to provide a degree of gas bypass such that increased pressure is provided during inhalation (Fig. 1).

With respect to claim 35, note rejection of claim 1 above and an axis of the inlet channel is directed towards an inner edge of the junction between the breathing channel and exhaust channels (Fig. 1).

With respect to claim 36, Kniewasser discloses wherein the axis of the gas inlet channel is laterally offset from the axis of the breathing channel at the point at which the gas inlet channel introduces the gas into the breathing channel (Fig. 1).

With respect to claim 38, Kniewasser discloses wherein the gas inlet channel is arranged to provide a degree of gas bypass such that increased pressure is provided during inhalation (Fig. 1).

***Allowable Subject Matter***

Claims 18, 22, 24, 25, 27, 28, 33, and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Teena Mitchell*  
Teena Mitchell  
Primary Examiner  
Art Unit 3743  
August 20, 2006

*TKM*  
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